

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
E & M CONTRACTORS, INC.,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 376

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

The formal hearing on the appeal of B & M Contractors, Inc. to a Notice of Civil Penalty of \$250.00 for an alleged open burning violation of respondent's Regulation I came before the Board with W. A. Gissberg and Mary Ellen McCaffree present, W. A. Gissberg presiding, on October 12, 1973 in Seattle, Washington.

Appellant appeared by and through one of its officers, Thomas E. Belt; respondent through its attorney, Keith D. McGoffin.

Having heard the testimony and being fully advised, the Board makes the following

FINDINGS OF FACT

I.

Section 9.02(b)(2) of respondent's Regulation I makes it unlawful for any person to cause or allow any outdoor fire containing rubber products, asphalt products, crankcase oil or petroleum wastes, plastics, garbage . . . , or any waste other than natural vegetation that emits dense smoke . . . when burned.

II.

On May 3, 1973, respondent's inspector observed an open, smoldering fire of paper, cardboard, scrap rubber, rubber-backed carpeting and other debris at 21400 Highway 99, Edmonds, Snohomish County, Washington (hereinafter called the site). At least two other prior open fires had occurred at the same site as evidenced by ashes and wire at the site.

III.

The ownership of the land at the site is vested in Mrs. Otto Kelder who had leased the site to a John W. Mills. He, in turn, had subleased the property at the time of the fire to and it was then occupied and under the control of Thomas E. Belt, doing business as a sole proprietorship under the name and style of B & M Contractors or as Belt Homes, Inc.

IV.

Notice of Violation No. 7453 was issued by respondent to B & M Contractors while the Notice of Civil Penalty for such violation was issued to B & M Contractors, Inc. The Notice of Civil Penalty is the subject of this appeal by B & M Contractors, Inc.

V.

Thomas E. Belt, and his entities, are engaged in construction, and have previously used the site for stockpiling scrap and debris. However, that practice has been discontinued for this site after the Notice of Civil Penalty was issued.

VI.

The fire which precipitated the Notice of Civil Penalty was started by persons unknown, but undoubtedly by one of Mr. Belt's subcontractors, two days before the Notice of Violation was issued. Mr. Belt, upon learning of the fire, immediately took unsuccessful steps to extinguish it by covering it with dirt.

VII.

Mr. Belt, at the hearing of this appeal, stated that he was not asserting as a defense the legal technicalities set forth in paragraphs III and IV of these Findings of Fact. His contention is that the amount of the civil penalty is excessive.

From which the Board makes the following

CONCLUSIONS OF LAW

I.

The Notice of Civil Penalty issued to B & M Contractors, Inc., should have been issued to B & M Contractors, a sole proprietorship owned by Thomas E. Belt. However, if this Board dismisses the Notice of Civil Penalty as to B & M Contractors, Inc., respondent would then be free to issue a new Notice of Civil Penalty to B & M Contractors for the Notice of Violation previously served upon that business entity, through Thomas E. Belt.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

II.

Appellant has waived any defects of the Notice of Civil Penalty.
From which the Board enters this

ORDER

The appeal is denied, but \$125.00 of the civil penalty is suspended on condition that the remaining \$125.00 is paid to respondent agency within one month from the date that this Order becomes final. If such sum is not paid as aforesaid then the entire \$250.00 civil penalty is affirmed.

DONE at Lacey, Washington this 17th day of October, 1973.

POLLUTION CONTROL HEARINGS BOARD

W. A. GISSBERG, Member

MARY ELLEN McCAFFREE, Member

FINDINGS OF FACT,
CONCLUSIONS AND ORDER